

## **REMARKS/ARGUMENTS**

### **Claim Amendments**

The Applicant has amended claims 2 and 24; claims 1, 23 and 25-41 have been canceled. Applicant respectfully submits no new matter has been added. Accordingly, claims 2-7, 9-19 and 24 are pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

### **Claim Rejections – 35 U.S.C. § 102(e)**

Claims 1-12, 14-17, 19-34, 36-39 and 41 stand rejected under 35 U.S.C. § 102(e) as being anticipated by McGregor et al, US Publication Number 2004/0058652 A1 (hereinafter McGregor). In order to expedite allowance of this application, the Applicant has canceled claims 1, 20-22 and 25-41 without prejudice. Therefore, this rejection with respect to these claims is deemed to be moot. The Applicant has amended claims 2 and 23-24 to better define the intended scope of the claimed invention. The Examiner's consideration of the amended claims is respectfully requested.

The McGregor reference discloses a method and system for monitoring mobile QoS (MQoS) data in a network and combining it to show current and historical network status. (Abstract). McGregor monitors mobile terminal operation characteristics to help determine the ability of the mobile to perform at a QoS level. A number of reports regarding the QoS of the mobile communications helps determine the level of the network QoS.

The present application collects mobile terminal type QoS data. The actual manufacturer identity of the particular mobile terminal is then correlated with information received from mobile terminals using the same network applications, and the performance of the mobile terminal type in the network is determined.

The Applicant respectfully directs the Examiner's attention to the excerpted elements of claim 2:

2. ....

...grouping IP packets belonging to a common application transaction of the mobile terminal type;  
reconstructing the user transactions from data within the received messages to determine underlying session information; and  
correlating the one or more performance indicators regarding the user transactions with data within the mobile terminal type information messages. (emphasis added)

The Applicant respectfully asserts that the McGregor reference does not include at least the emphasized limitations and respectfully requests the allowance of amended claim 2. Amdended claims 23 and 24 are analogous claims and contain similar limitations and the Applicant respectfully requests allowance of those claims as well.

Claims 12, 14-17, and 19 depend from amended claim 2 and recite further limitations in combination with the novel elements of claim 2. Therefore, the allowance of claims 12, 14-17 and 19 is respectfully requested.

#### **Claim Rejections – 35 U.S.C. § 103 (a)**

Claims 13 and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McGregor et al, US Publication Number 2004/0058652 A1 (hereinafter McGregor) as applied to claims 1 and 2 above, and further in view of Krishnamurthi et al, US Publication Number 2003/0142629 A1 (hereinafter Krishnamurthi). In order to expedite allowance of this application, the Applicant has canceled the claims 20-22 and 25-41 without prejudice. Therefore, this rejection with respect claim 35 is deemed to be moot.

The Krishnamurthi reference is cited for disclosing techniques to test performance of terminal and access points in a CDMA system. However, Krishnamurthi fails to disclose the limitations of correlating performance of mobile terminals by the same manufacture in the network as recited in claim 1. This is also not disclosed in the McGregor reference. The applicant respectfully submits that claim 13 depends from amended claim 2 and contains the same novel limitations. Therefore, the Applicant respectfully submits that the rejection of claim 13 be withdrawn.

Claims 18 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McGregor et al, US Publication Number 2004/0058652 A1 (hereinafter McGregor) as applied to claims 1 and 2 above, and further in view of Jha et al, US Publication Number 2004/0138807 A1 (hereinafter Jha). In order to expedite allowance of this application, the Applicant has canceled claim 40 without prejudice. Therefore, this rejection with respect to this claim is deemed to be moot.

The McGregor reference is lacks certain aforementioned limitations but is lacking certain limitations found in the Applicant's independent claims. The Jha reference is cited as teaching the step of constructing a performance database with fields that identify the type of mobile terminal and the type of user transaction. The purpose of the database in Jha is use the mobile terminal identity information to select the best protocol for location services communication. The Applicant discloses a method and apparatus for determining the operating characteristics of particular mobile terminal types (e.g., by manufacturer) in a network. Jha does not disclose at least the limitation, also missing from McGregor, of grouping IP packets belonging to a particular application and the mobile terminal type. This being the case the Applicant respectfully requests the allowance of claim 18.

#### **Prior Art Not Relied Upon**

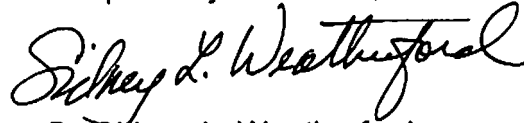
In paragraph 8 on page 9 of the Office Action, the Examiner stated that the prior art made of record and not relied upon is considered pertinent to the Applicant's disclosure.

### **CONCLUSION**

In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for all pending claims.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,

A handwritten signature in black ink, reading "Sidney L. Weatherford". The signature is fluid and cursive, with the first name "Sidney" being more prominent.

By Sidney L. Weatherford  
Registration No. 45,602

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